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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,396	12/01/2003	Thomas Marotzke	076326-0256	9999

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FOLEY AND LARDNER  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER
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ILAN, RUTH

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/724,396

Applicant(s)

MAROTZKE, THOMAS

Examiner

Ruth Ilan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-21 is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-18 and 22-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 26 recites "a cover for the container". Claim 25 as amended already includes "a module cover" and as such this second recitation amounts to double inclusion, and is unclear.

***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-4, 11-14 and 23-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Lutz (US 6,126,195.) Lutz teaches an air bag module including a generator carrier that has a base with a boundary wall (21) and which together with a separate cap assembly (5) forms a receptacle for a folded gas bag (7). At least one portion of the boundary wall is pivotally connected to the base (at 27) so that the boundary wall can pivot and create a free space. The orifice defines a main deployment direction and the additional free space formed by the pivoting walls is in a direction perpendicular to the main direction. Regarding claim 1, as amended, the module is

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configured so that the pivoting of the at least one portion of the boundary wall is caused by a force applied by the deploying gas bag (see col. 3, lines 55-57) and regarding claims 11-13, the pivotal wall portion is configured to pivot as a result of the cover opening during deployment and as a result of forces from the air bag (see col. 3, lines 55-57.) There are means to counteract the pivoting of the wall portion (unbroken constriction in the cap (11)). There are two pivotal wall portions opposite each other. Regarding claim 1, as amended, the limitation "the folded gas bag at least partially surrounds the gas generator" is met by Lutz for the following reasons. The use of the term "partially surrounds" broadens the term sufficiently to include a broad reasonable interpretation being that the folded bag of Lutz forms part of the environment of the gas generator, in that it is next to it. (see Merriam Webster's Dictionary, 10<sup>th</sup> edition.) Additionally, the gas generator is surrounded on all sides, and is partially surrounded by the folded gas bag because one of the sides of its surroundings includes the gas bag (see Figure 3, or Figure 4.) Regarding claim 27, and the broad recitation of "lateral portions", the top two corners and edges are lateral portions, and as described in column 3, lines 55-57, they press laterally outward by gases flowing into the gas bag.

5. Claims 1-6, 10-14, 18, and 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Lang (US 6,364,345 B1.) Lang teaches an air bag module including a gas generator carrier that includes a base (12,14) for fastening a gas generator and the carrier includes at least one boundary wall (20) that projects from the base. Regarding the limitation "integrally formed in one piece on the base" Because the boundary wall is

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connected to the base it is formed in one piece and integral. Integral is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte* (CCPA) 177 USPQ 326. The boundary wall and the base form a receptacle for the folded air bag. The orifice defines a main deployment direction and the additional free space formed by the pivoting walls is in a direction perpendicular to the main direction. As seen in Figure 7, the module includes a single continuous boundary wall (12), which has a bowl shaped design, at least in profile. Regarding claim 10, the area of the hinge between 30 and 20 is a slot. Regarding claims 1, 11-13, the cover is opened by the deploying air bag, and the cover causes the walls to pivot, so the walls pivot as a result of the air bag deployment. Regarding claims 14 and 18, Lang teaches embodiments that include means to counteract pivoting (see Figures 16-18, elements 60, 66, 72 for instance.) Regarding claim 22, there is a slot between walls 14 and 20 (see Figure 6.) Regarding claims 21 and 22, there are two pivotal wall portions (20) opposite each other. Regarding claim 1, as amended, the limitation "the folded gas bag at least partially surrounds the gas generator" is met by Lang for the following reasons. The use of the term "partially surrounds" broadens the term sufficiently to include a broad reasonable interpretation being that the folded bag of Lang forms part of the environment of the gas generator, in that it is next to it. (see Merriam Webster's Dictionary, 10<sup>th</sup> edition.) Additionally, the gas generator is surrounded on all sides, and is partially surrounded by the folded gas bag because one of the sides of its surroundings includes the gas bag.

***Claim Rejections - 35 USC § 103***

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz in view of Cok et al. (US 4,903,986.) Lutz is discussed above, and because only a side view of the module is shown, fails to the means for counteracting that connects a pivotal wall portion to a second wall portion, and that the means is integrated into the wall portion and is a perforated region. Cok et al. (Figure 7) teaches that it is known to connect two wall portions together by a perforation so that one wall will pivot when the pressure from the deployed air bag is high enough. It would have been obvious to one having ordinary skill in the art to include such a perforated region, as taught by Cok et al. with the module of Lutz, in order to insure that the pivotal walls open at the appropriate pressure.

8. Claims 1-4, 6, 11-13, 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aulbach et al. (DE 19960251) in view of Lutz (US 6,126,195.) Aulbach et al. teaches (Figure 2a, 2b) an air bag module that includes a generator carrier that has a base with a boundary wall (24) and forms a receptacle for a folded gas bag (14). At least one portion of the boundary wall is pivotally connected to the base (at 58) so that the boundary wall can pivot and create a free space. The orifice defines a main deployment direction and the additional free space formed by the pivoting walls is in a direction perpendicular to the main direction. The gas bag surrounds the gas

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generator. Regarding claims 1 and 28, as amended, the module is configured so that the pivoting of the at least one portion of the boundary wall is caused by a force applied by the deploying gas bag (see Figure 2b) and regarding claims 11-13, the pivotal wall portion is configured to pivot as a result of the cover opening during deployment and as a result of forces from the air bag. There are two pivotal wall portions opposite each other. Aulbach et al. fails to teach that the cap is a separate cap. Lutz teaches that it is known to provide gas bag modules that have pivotal walls with separate caps (5). It would have been obvious to one having ordinary skill in the art at the time of the invention to include a separate cap, as taught by Lutz, with the gas bag module of Aulbach et al., in order to provide for a cap that can be easily replaced without requiring replacement of the entire module. It has also been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

#### ***Allowable Subject Matter***

9. Claims 19-21 are allowed.

#### ***Response to Arguments***

10. Applicant's arguments have been fully considered but they are not persuasive. The use of the term "at least partially surrounds" is broad, and encompasses the gas bags of Lutz and Lang. The argument that the gas bag of Lang is separate from the gas generator is not persuasive because in order to surround something, the elements do not have to be touching each other. Additionally, "at least partially surrounds" is such a broad term that it only reasonably requires the interpretations provided above in the

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rejections, that is that the gas bag should be in the area surrounding the gas generator, and since the gas generator is surrounded by elements, these elements separately partially surround the gas generator. Regarding Lutz, it is the Examiner's position that the gas bag of Lutz contributes to the opening of the module as taught in col. 3, lines 55-57, and as such meets the limitations of claim 1.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth Ilan whose telephone number is 571-272-6673. The examiner can normally be reached on Monday-Friday, 8:30-5:00.



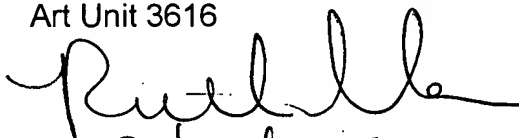
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RI  
8/2/05

Ruth Ilan  
Primary Examiner  
Art Unit 3616

  
8/2/05